

Service Date: June 28, 1990

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER of the Application)	TRANSPORTATION DIVISION
of Burlington Northern Railroad)	
Company to Discontinue its Direct)	DOCKET NO. T-9465
Service Operations at Stanford,)	
Montana.)	ORDER NO. 5998

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FINAL ORDER

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APPEARANCES

FOR THE APPLICANT:

Charles C. Dearden, Attorney at Law, Burlington Northern Railroad Company, Murphy, Robinson, Heckathorn and Phillips, P.C., One Main Building, Kalispell, Montana 59903-0759

FOR THE COMMISSION:

Robin A. McHugh, Commission Attorney, 2701 Prospect Avenue, Helena, Montana 59620-2601

Wayne Budt, Transportation Division, 2701 Prospect Avenue, Helena, Montana 59620-2601

BEFORE:

CLYDE JARVIS, Chairman and Hearing Examiner

BACKGROUND

On October 18, 1989 Burlington Northern Railroad Company (BN) filed a petition with the Public Service Commission (Commission) for authority to discontinue its Direct Service Agency operations at Stanford, Montana. The petition states that the direct service agent at Stanford provides service to Judith Gap, Buffalo, Hobson, Moccasin and Windham.

Following issuance of proper notice a public hearing was held on December 12, 1989 in the City Council Chambers, City Hall, Stanford, Montana. No protests were filed prior to the hearing, however, several public witnesses testified in opposition to the petition. At the conclusion of the hearing it was stipulated by all present that the Commission may issue a final order.

SUMMARY OF TESTIMONY

James D. Whittmyer, Charles Scheibe, Charles Keeler and William Albright, employees of BN, appeared in support of the petition and incorporated into this proceeding by reference their testimony in Docket No. T-9464. Mr. Albright sponsored BN Exhibit A, a compilation of rail traffic statistics for the Stanford DSA, similar to the statistics compiled for the Stanford agency in Docket No. T-9464.

James T. Mular, legislative director of the Transportation and Communications Union (TCU), appeared and testified on behalf of TCU in opposition to the petition. Mr. Mular sponsored the following exhibits:

TCU Exhibit No. 1 -- Commission Order No. 4113, authorizing BN to establish direct agency service at Windham, Benchland, Moccasin, Kohn and Hobson, Montana;

TCU Exhibit No. 2 -- A BN position vacancy bulletin for the Stanford DSA.

Mr. Mular stated that BN has not complied with Commission Order No. 4113. BN objected to the introduction of both TCU exhibits.

Joseph P. Shannon, a former agent for the BN and Milwaukee railroads, and a former Stanford DSA agent, appeared and testified in opposition to the petition. Mr. Shannon described the duties of an agent generally, as well as his duties as an agent for BN. Mr. Shannon sponsored public witness Exhibit No. 1, a letter to him from J.D. Whittmyer, limiting his trips to the direct service agencies to twice weekly.

Ed Hall and Gene Demars appeared and testified in opposition to the petition. They incorporated by reference in this proceeding the testimony they gave in Docket No. T-9464.

DISCUSSION

In the course of reviewing the record in this proceeding the Commission discovered that BN's petition to discontinue the Stanford DSA was incomplete. Commission Order No. 4113, Docket No. 6184, that established the Stanford DSA, determined that the agent would serve Windham, Benchland, Moccasin, Kolin and Hobson. BN's present petition to discontinue the Stanford DSA indicates that the agent serves Judith Gap, Buffalo, Hobson, Moccasin and Windham. The Commission's notice reflected the BN's petition, excluding Benchland. Judith Gap and Buffalo, never formally included in the Stanford DSA, have apparently been voluntarily served by BN through the DSA, and have no bearing on this proceeding. Kolin was served by the DSA pursuant

to the original order but is no longer a location on BN's system. With respect to Benchland, however, the Commission finds that both BN's petition and the Commission's notice were deficient, and that service to Benchland cannot be terminated by this order. BN must file another petition that requests to discontinue direct agency service to Benchland.

Commission authority to close a railroad agency is provided at 69-14-202, MCA, which reads as follows:

69-14-202. Duty to furnish shipping and passenger facilities. (1)

Every person, corporation, or association operating a railroad in the state on January 1, 1987, or a successor thereto, shall maintain and staff facilities for shipment and delivery of freight and shall ship and deliver freight and accommodate passengers in such facilities as were maintained and staffed on January 1, 1987.

(2) However, if a person, corporation, or association operating a railroad demonstrates to the public service commission, following an opportunity for a public hearing in the community where the facility is situated, that a facility is not required for public convenience and necessity, the commission shall authorize the closure, consolidation, or centralization of the facility. In determining public convenience and necessity, the commission shall, prior to making its decision, weigh and balance the facts and testimony presented at the hearing, including the facts and testimony presented by the general public, the existing burdens on the railroad, the burdens placed upon the shipping and general public if the application is granted, and any other factors the commission considers significant to provide adequate rail service.

The Commission interprets this section as requiring an analysis of the impacts of a proposed closure on shippers and the general public.

There is no testimony from shippers on the record in this proceeding. BN indicated that it has received no complaints from shippers over this petition and further indicated that closing the Stanford agency will not affect service to shippers.

With respect to an analysis of the impacts of a proposed closure on members of the general public the Commission has written:

For the Commission to deny an application of this kind, primarily on the basis of impact on persons other than shippers, it needs to be convinced either 1) that, in the absence of an agent, the community will experience serious safety problems as a result of railroad operations, or 2) will experience other significant problems related to railroad operations that an agent is uniquely able to prevent or solve.

In the Matter of the Application of Burlington Northern Railroad Company to discontinue its Agency and Dispose of the Depot Facility at Hysham, Montana, Order No. 5866, p. 15. No testimony on safety concerns was presented at the hearing. There was some testimony indicating a preference that the agency be maintained, but nothing on this record can support a conclusion that significant problems related to railroad operations will occur in the absence of a Stanford direct service agent.

With respect to Protestant Mular's contention that BN has violated Order No. 4113 by not providing daily agency service to all the communities, the Commission finds that there has been no violation because Order No. 4113 states that service should be "as may be required." There is no requirement of daily service.

CONCLUSIONS OF LAW

The Montana Public Service Commission properly exercises jurisdiction over the parties and matters in this proceeding pursuant to Montana Code Annotated, Title 69, Chapter 14.

The Commission has provided adequate notice and opportunity to be heard to all interested parties in this matter pursuant to Montana Code Annotated Title 2, Chapter 4.

No set rule can be used to determine whether or not the public convenience and necessity require a given service to be performed. The facts in each case must be separately considered and from those facts the question is to be determined. See Chicago, M. St. P. and P.R.G. v. Board of Railroad Commissioners, 126 Mont. 568, 225 P.2d 346 (1953), cert. denied 346 U.S. 823.

Public Convenience and Necessity does not require the maintenance of the direct agency service at Hobson, Moccasin and Windham, Montana.

ORDER

NOW THEREFORE IT IS ORDERED that BN's petition to discontinue its direct agency service to Hobson, Moccasin and Windham is Granted. Pending BN's petition to discontinue direct agency service to Benchland, the BN shall serve Benchland through its customer service representative out of Great Falls. If, following a hearing, the evidence supports a need for a Stanford direct service agent for Benchland, the Commission will so order.

IT IS FURTHER ORDERED that BN shall file a petition to discontinue direct agency service to Benchland within 60 days.

IT IS FURTHER ORDERED that BN's objections to the admission of evidence and testimony are Denied and all proposed exhibits are made part of the record and have been given the weight they deserve in Commission deliberations.

IT IS FURTHER ORDERED that this Order be effective immediately and that a full, true and correct copy of this Order be mailed forthwith to the Applicant and all parties of record.

Done and Dated this 28th day of June, 1990 by a vote of 5 - 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

CLYDE JARVIS, Chairman

HOWARD L. ELLIS, Vice Chairman

JOHN B. DRISCOLL, Commissioner

WALLACE W. "WALLY" MERCER, Commissioner

DANNY OBERG, Commissioner

ATTEST:

Ann Peck
Commission Secretary

(SEAL)

NOTE: Any interested party may request that the Commission reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.